

# Private Sector Involvement in Monitoring and Implementation

The U.S. government has actively sought the involvement of the private sector in efforts to combat international bribery and promote adoption of the Convention. The U.S. private sector played an active advisory role throughout the negotiation of the Convention, as well as during the congressional debates over the amendments to the FCPA. Private sector support proved to be of great importance in achieving international agreement on the Convention and encouraging passage of implementing legislation by the first group of signatories to deposit their instruments of ratification with the OECD. As a result of this close collaboration, the groundwork for a government-private sector dialogue on implementing the Convention was already well established when the Convention entered into force. The Clinton Administration is pleased to report that it continues to enjoy a close working relationship with the private sector now that the Convention has reached the implementation and monitoring stage.

## U.S. Government Outreach Since 1988

In the Omnibus Trade and Competitiveness Act of 1988, Congress directed the executive branch to pursue an agreement with trading partners of the United States in the OECD to criminalize bribery of foreign

public officials in international business transactions, along the lines of the FCPA. Since that time, the U.S. government has actively sought involvement of the private sector in antibribery initiatives. For the past eleven years, U.S. officials have met frequently with private sector groups about international bribery and have both sponsored and participated in anticorruption conferences around the world. They have also hosted and attended many government-private sector informational meetings on anticorruption matters. And they have solicited the views of many individual private sector entities regarding international anticorruption strategies in the OECD and other international forums, such as the United Nations, the World Trade Organization, the Organization of American States, and the Asia-Pacific Economic Cooperation forum. In short, the U.S. government has sought to ensure that the experiences of the private sector play an important role in shaping the U.S. anticorruption strategy, and that individual private sector companies have an opportunity to present their views on the Convention.

## Role in the Negotiation of the Convention And Amendments to the FCPA

During the negotiations on the Convention, U.S. private sector representatives met with U.S. negotia-

tors and their counterparts in other countries to support its adoption. It was due in significant part to private sector involvement that the negotiations were successful and that the Convention was adopted on November 21, 1997, and signed on December 17, 1997.

Furthermore, the private sector helped to secure bipartisan congressional support for the prompt passage of the IAFCA, the amendments to the FCPA implementing the Convention under U.S. law. Through numerous letters and memoranda, the private sector informed U.S. officials of its views on the amendments and conveyed its opinions and support of the implementing legislation to Congress. The private sector also hosted numerous private sector–government informational meetings on the Convention and the implementing legislation and participated in congressional hearings on the IAFCA.

### **Role in Monitoring and Implementation Of the Convention**

Since the Convention entered into force on February 15, 1999, the Clinton Administration has continued its productive dialogue with the private sector on monitoring and implementation. Senior U.S. officials, including Commerce Secretary William Daley, Treasury Secretary Robert Rubin, Commerce Under Secretary for International Trade David Aaron, Under Secretary of State Stuart Eizenstat, and other senior U.S. officials had many contacts with private sector groups on the Convention. For example, Daley's speech to the Board of Directors of Transparency International in January of this year reviewed the Convention and the U.S. government's strategy for monitoring its implementation.

Already this year, the Clinton Administration has sponsored and participated in several conferences to promote private sector interest in the monitoring and implementation of the Convention. Representatives of the private sector attended the Vice President's February Conference on fighting global corruption, where the Convention was highlighted in remarks by several U.S. officials. Representatives from nearly ninety countries participated in the conference. U.S. officials also discussed the Convention with private sector representatives in February at the "Washington Conference on Corruption: Fighting Corruption in Developing Countries and Emerging Economies: the Role of the Private Sector" sponsored by the OECD Development Center and several nongovernmental organi-

zations. These conferences are just two recent examples of ongoing exchange with the private sector on the Convention.

In addition, U.S. officials have provided information on the Convention to the private sector by participating in numerous meetings on the Convention held by corporations, law firms, and business associations, such as the National Association of Manufacturers and the Business Roundtable. U.S. officials regularly attend meetings with groups that have a strong interest in combating international corruption, including Transparency International, the American Bar Association Task Force on International Standards for Corrupt Practices, the U.S. Council for International Business and the International Organization of Employers.

U.S. agencies continue to make use of the existing advisory committee structure as a forum for dialogue with the private sector when discussions go beyond the exchange of information and into the solicitation of recommendations of advice on specific matters of policy. For example, the Department of Commerce maintains an ongoing dialogue with the private sector through its regularly scheduled meetings of Industry Sector Advisory Committees (ISACs), Industry Functional Advisory Committees (IFACs), and the President's Export Council (PEC). Commerce has raised the issue of international bribery before the Transatlantic Business Dialogue (TABD), a public/private partnership in which U.S. and European Union businesses meet to discuss transatlantic trade barriers and relay their findings to their governments. TABD members have stressed the importance of fighting corruption and bribery at all of its annual conferences. The State Department receives input on bribery issues through its Advisory Committee on International Economic Policy. At these meetings, U.S. officials have given detailed presentations on the status of the Convention and its implementation and have requested input from the companies represented.

The U.S. private sector has also participated in monitoring the Convention through international business groups, such as the OECD's Business and Industry Advisory Committee. BIAC is an officially recognized business advisory group composed of private sector representatives from OECD member countries. It has strongly supported the Convention and spoken out frequently on the need to fight corruption and bribery.

The U.S. government will continue to work with the private sector and nongovernmental organizations,

like Transparency International, and will also be extending lines of dialogue to other organizations. The International Trade Administration's Trade Compliance Center will be using its Compliance Liaison Program and other private sector initiatives to enlist the cooperation of the private sector in monitoring bribery of foreign public officials and implementation of the Convention. The business community and nongovernmental organizations can help by providing the U.S. government with additional "eyes and ears" for tracking bribery and possible violations of the ethical standards in the Convention. Individuals, companies and nongovernmental organizations can report this information directly on the Trade Compliance Center's Trade Complaint Hotline.

The U.S. government, for its part, will continue to share as much information as possible about the monitoring process with the private sector. U.S. officials respond to public inquiries on the Convention and the status of its implementation on a daily basis. Both the Commerce Department's Office of General Counsel and Justice Department's Criminal Division have posted the Convention and related commentaries, as well as the full text of the IAFCA and other background materials, on their websites. The Justice Department has posted on its website the responses of the United States to the OECD Phase I Questionnaire on our implementing legislation and the full text of the FCPA. Moreover, Commerce has provided detailed information on the status of the implementation of the Convention by our trading partners and final versions of several signatories' implementing legislation as the legislation has become publicly available. Commerce's Trade Compliance Center has also included on its website an Exporters' Guide to help businesses understand key provisions of the Convention. In addition, the United States Information Agency, the U.S. Office of Government Ethics, and the State Department also have websites with information on anticorruption issues.

In summary, the U.S. government has worked hard over the years to build a strong working relationship with the U.S. private sector in order to combat international bribery and corruption. We are committed to maintaining this valuable relationship during the monitoring and implementation phase of the Convention.